IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

***CRIMINAL APPEAL NO.159 SB OF 1997***

DATE OF DECISION: APRIL 03, 2007

Gulab Singh and others

.....Appellants

VERSUS

State of Haryana

....Respondent

CORAM:- HON'BLE MR.JUSTICE RANJIT SINGH

1. **Whether Reporters of local papers may be allowed to see the judgement?**
2. **To be referred to the Reporters or not?**
3. **Whether the judgment should be reported in the Digest?**

PRESENT: Mr. S. S. Narula, Advocate,
for the appellants.

Mr. Dilbag Singh, AAG, Haryana,
for the State.

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RANJIT SINGH, J.

Being convicted for an offence of dowry death under Section 304-B IPC and facing rigorous imprisonment for 7 years, the appellants have filed the present appeal.

Appellant Gulab Singh married Smt.Babli on 7.7.1995 and thereafter she started residing with him at Village Akbarpur Barota. She died an unnatural death due to fire on 10.11.1995, just after 5 months of her marriage. As per the allegation of the prosecution, she had set herself on fire whereas it was projected by the defence that she died of burn injuries as a result of stove burst.

Raghbir Singh, father of late Babli, lodged this complaint, alleging that when his daughter came back to her parental house immediately after marriage, she had revealed that her mother-in-law Bharpai and the other accused taunted her by saying that she was of dark complexion and had not brought sufficient ornaments and dowry. Complainant Raghbir Singh refused to send his daughter Babli with appellant Gulab Singh when he came to take her after 10-15 days of reaching her parental house. He told appellant Gulab Singh to bring his parents in order to assure him that his daughter Babli would be kept properly. On 24.9.1995, when appellant Gulab Singh alongwith his father Jai Bhagwan had come to the house of the complainant, Narender Pal, maternal uncle of the complainant was also present. At that time, a writing, Ex.PC, was executed to the effect that the family of the appellants would not harass deceased Babli. Both appellants, Jai Bhagwan and Gulab Singh also gave assurance for keeping deceased Babli properly and only thereafter she was sent with appellant Gulab Singh. It is further alleged that after some days, deceased Babli had again complained of being taunted for not bringing the ornaments and dowry when she came to her parental house. Thereafter, on 9.11.1995, an intimation was received that deceased Babli was admitted in Safdarjang Hospital, Delhi, due to abdomen pain. Complainant Raghbir Singh had gone to the said hospital but did not find her there. Thereafter, Jai Bhagwan, father of appellant Gulab Singh, disclosed that deceased Babli had caught fire while burning Chula and that she was admitted in the hospital at Delhi. She was ultimately traced at Lok Narayan Jai Parkash Hospital, Delhi. She, however, was found dead at 1.00 A.M. on

10.11.1995, when the complainant reached the said hospital. The complainant found her body lying in a burnt condition and accordingly, he made his statement, Ex.DA, before Kuldip Pakad (PW7), Sub Divisional Magistrate, Kingsway Camp, Delhi. Post mortem of the deceased was conducted on 12.11.1995 at Maulana Azad Medical College, New Delhi. Babli was found to have died due to burn shock consequent upon burn injuries which were ante mortem in nature and recent in duration. The extent of burns was 90% and were found sufficient to cause death in ordinary course. Inquest proceedings were completed but still no FIR was registered.

On 21.11.1995, complainant Raghbir Singh met ASI Raj Kumar (PW8) and presented a complaint, Ex.PB/1 in regard to this incident, disclosing the harassment and beating of his deceased daughter Babli by Gulab Singh, Jai Bhagwan, Bharpai and Krishan. Accordingly, FIR No.351 dated 21.11.1995 was registered at Police Station Rai.

The investigation was conducted, leading to arrest of Jai Bhagwan on 5.12.1995, Gulab Singh and Krishan on 6.12.1995 and Smt.Bharpai on 7.12.1995. They were accordingly charged under Sections 304B and 406 IPC.

Prosecution examined 9 witnesses in all, including complainant, his wife Lilawati and his uncle Narender Pal. After examining Constable Ravinder Singh, MHC Ramphal, S.D.M. Kuldip Pakad, ASI Raj Kumar and Dr.Shambir Singh, the prosecution gave up remaining witnesses being unnecessary.

The appellants when asked to explain the evidence and circumstances appearing against them, pleaded that the case was

false and fabricated. Revealing that altercation had taken place between the families at the time of marriage and that deceased Babli was sent with marriage party after great difficulty The appellants disclosed that she was kept well and properly. The allegations of raising demand of dowry and harassment are denied and it is disclosed that Babli had caught fire by accident while cooking meals. The appellants tendered in evidence Ex.DE, a copy of medico legal report dated 9.11.1995 and then closed the case of defence. The trial Court, after analysing the evidence, found the appellants guilty of the offence under Section 304B IPC and sentenced as stated above but acquitted Jai Bhagwan by giving him benefit of doubt. Hence, the present appeal.

Mr.S.S.Narula, learned counsel appearing for the appellants, has made detailed reference to the evidence led by prosecution to urge that there was no demand of dowry raised soon before the death of deceased Babli or that she was treated with cruelty or harassment by the appellants in any manner in connection with any demand of dowry. He would first refer to the first information report lodged after 11 days of the incident to say that there was no demand of dowry soon before the death of Babli. In the First Information Report, it is alleged that when the complainant went to take his daughter after the marriage, she started weeping and told him that the appellants Gulab Singh, father-in-law Jai Bhagwan, mother-in-law Bharpai and brother-in-law Krishan gave her beating for bringing inadequate dowry. As per the complainant, when he spoke to his son-in-law and his father, they complained about inadequate dowry and further stated that atleast `***hath phul',*** a

***`tagri'*** and a pair of golden ear ring should have been given. The complainant has then made reference to the happening on 24.9.1995, when appellant Gulab Singh alongwith his father had gone to fetch deceased Babli from her parental house. He has also made reference to the fact that they admitted their fault and agreed to give the same in writing that they would not harass Babli in future and would not raise any demand of dowry. In this regard, prosecution has also relied upon a writing, Ex.PD, to say that there was a demand of dowry and harassment, as conceded by appellant Gulab Singh and his father. No other allegation of any harassment or demand of dowry, except as stated above, is revealed from the FIR. Perusing the contents of the FIR, even minutely, would not reveal any demand of dowry having been raised by the appellants on 24.9.1995 or any date prior thereto. The contents of the FIR would only show that the appellants were accused of having complained for inadequate dowry but there is no allegation of raising any demand, on account of which deceased Babli was harassed or which could be linked to her being taken to the matrimonial home on 24.9.1995. Since much reliance was placed by the prosecution on writing, Ex.PD, it would be necessary to see its contents as well. The recital of this writing makes a reference to the gathering of relatives at the house of the complainant. It is then mentioned that the marriage took place on 7.7.1995 with son of Jai Bhagwan. Thereafter, it is written that in-laws of Babli had made some unwanted (***NAJAYEJ)*** utterances against Babli, daughter of the complainant. A mention is also made to the effect that in-laws had complained that she had brought less dowry and certain other facts, which statedly were not

considered essential to be disclosed in writing. The exact averments in this writing in this regard reads "***tatha anya kai baten jinka ham khulasa nahi karna chahte"***. Thereafter, it is simply recorded that the matter has been resolved with the assurance that Babli would not be put to trouble and in case there was any complaint against Babli, it would first be brought to the notice of her parents so as to avoid any differences. Deceased Babli had accordingly accompanied her husband to her in-laws' place. There is no complaint made against any of the appellants subsequent to 24.9.1995. Even from writing, Ex.PD, it cannot be made out that the appellants had raised any demand of dowry, which was settled or paid. Even if what is written in Ex.PD, had indeed taken place, it would not be possible to consider it soon before the death of deceased Babli, which ultimately takes place on 9/10.11.1995.

The evidence of complainant, Raghbir Singh (PW4) would also not advance the case of prosecution in any substantial manner. He has basically deposed on the line of complaint made by him. The crux of the allegations is that the appellant Bharpai (mother-in-law of deceased Babli) had taunted her by saying that she was of a dark complexion and did not bring adequate dowry. During his deposition, PW4 further disclosed that the accused had beaten his daughter Babli. PW4 has referred to incidents which took place after 15/20 days of the marriage and two months prior to the date of her death, which were disclosed to him by his late daughter. It is in this background that he made a reference to the happenings of 24.9.1995 and the writing that was made between the families. During his cross-examination, PW4 was confronted with his

statement made before the Sub Divisional Magistrate at Delhi where he had not stated anything as now deposed before the Court that he was to give ornaments in near future. PW4 had also not made any mention about details of ornaments demanded by the accused in his statement before the S.D.M., when he was confronted in this regard. Even his version that appellant Gulab Singh had come to take his daughter after 15-20 days of the marriage was also not found reflected in the statement that he had made before the S.D.M. In this background, a suggestion was put to the witness that deceased Babli caught fire accidentally while cooking meals and otherwise none of them had ever harassed her or raised any demand of dowry. Though this suggestion was denied but it can be noticed that PW4 did not conduct himself with much credence and was found to have made improvements on material points while appearing as a witness. He had not disclosed these facts at the earliest opportunity available to him while making statement before the S.D.M. There is no allegation that he was in any manner put under any restriction while making statement before the S.D.M. at Delhi and accordingly improvements/omissions, as already noticed and pointed out as above, can not easily be explained by PW4. In fact, the prosecution case would receive further dent from the evidence of PW5 Lilawati, wife of the complainant and mother of the deceased. Though she has supported her husband in regard to her daughter coming to their house and complaining about the fact that she was beaten by appellants, Krishan and Gulab Singh but no such allegations were made against appellant Bharpai, mother-in-law of the deceased. Against her, it is only stated that she taunted her daughter not to be

of a good match for appellant Gulab Singh being dark complexion. She has also made reference to the meeting that took place between the families after about two months of the marriage, leading to writing Ex.PD and taking of deceased Babli, by the appellants' family. Having said so, PW5 clearly deposed that there was no complaint made by her daughter against her in-laws thereafter. Her evidence in this regard is "**then Babli again came to my house after about one month and told us that now the accused were keeping her properly.**" It is, thus, seen that there is no complaint made by deceased against the appellants after she had left with them on 24.9.1995. In this background, it would be rather difficult to rely upon the deposition of PW4 Raghbir, complainant. It would be safe to say that there was no complaint of harassment or demand of dowry soon before the date of death. Rather evidence is to the contrary and it has come on record not through any stranger but from a star prosecution witness, who happens to be the mother of the deceased. She would not have any reason to support defence or to say anything which is factually not correct or against the interest of prosecution. Her saying so means, that it would clearly indicate that it is the factual position. Accordingly, it would be safe to say that there was no harassment of the deceased or that she was subjected to any cruelty or harassment in connection with any demand of dowry soon before her death. It is already noticed that in fact no demand of dowry can be made out from the material and evidence that is placed on record. No doubt, deceased Babli had died within 5-6 months of her marriage but this case appears to be of an accidental fire, which

the deceased caught while cooking food. This will also explain the delay in lodging the FIR. It is clear from the facts as noticed that complainant, father of the deceased, was immediately informed about the incident and had reached Delhi on the day of incident itself. It is also seen that the deceased was taken to the hospital for treatment by the appellants. As per the record, she was first taken to Safdarjung Hospital from where she was shifted to Lok Narayan Jai Parkash Hospital, Delhi. Even in Ex.DE, a writing made at the hospital, it is recorded that the deceased had caught fire from the stove burst at her house. She was found conscious and oriented though unfit to make a statement. All out efforts were made by the appellants to provide best possible medical cover to the deceased but unfortunately she died. Even in the short history, as recorded at Lok Narayan Jai Parkash Hospital, Delhi, it is mentioned that the deceased had received alleged burn injuries while pumping stove, which bursted and the clothes caught fire. Ex.DD in this regard would also show that brother-in-law of the deceased had put quilt all over the patient (deceased Babli) to stop the fire and had taken her to Safdarjung Hospital, Delhi. She was thereafter shifted to Lok Narayan Jai Parkash Hospital, Delhi as there was no vacancy at Safdarjang Hospital.

Dr.Shambir Singh, who conducted the post mortem of the deceased, clearly stated that except for the burn injuries, there was no mark of violence on the body of the deceased. He had significantly brought out in his cross-examination that Ex.DD (referred to above) was written by Dr.Dinesh Dimri when the patient (deceased Babli) was alive. Having regard to this evidence, it can be

said that prosecution was not able to prove its case beyond a reasonable doubt. I do not consider it essential to make reference to law relating to the burden of proof that rests upon prosecution in the criminal cases. As has consistently been held, onus of proving all the ingredients of an offence is always upon the prosecution and at no stage does it shift upon the accused. In ***Dr.S.L.Goswami Vs. State of Madhya Pradesh***, AIR 1972 SC 716, it was held that it is no part of the prosecution duty to somehow hook the crook. In ***Shamnsaheb M.Multtani Vs. State of Karnataka***, JT 2001(2) SC 92, it is held that the burden of proof never shifts and it ever remains on the prosecution, which has to prove the charge beyond all reasonable doubt. The said traditional legal concept remains unchanged even now. It is a cardinal principle of criminal jurisprudence that innocence of accused is presumed till otherwise proved. The standard of proof as expected from prosecution to establish the case beyond reasonable doubt would be found wanting in this case.

Mr.Narula, learned counsel appearing for the appellants, has also drawn my attention to the case of ***State of Punjab Vs. Kirpal Singh and ors.***, 1991 (3) RCR 495 to say that allegation of taunting the bride for bringing less dowry would not amount to even abetment by instigation. He would also refer to a decision in the case of ***State of Punjab Vs. Nandlal and another,*** 2003 (2) RCR (Criminal) 219 to say that when a written document is drawn where no mention of dowry is made, oral evidence of PW's regarding demand of dowry could not be believed in view of a written

document. In this very judgment, it is noticed that no instance of any particular demand of goods or money or any material goods is given. In the absence of specific allegations, it was not considered prudent to rely on bald allegations of demand of dowry. Bald assertions, thus, are held not reliable. Learned counsel would then refer to the case of ***State of Haryana Vs. Vijay Kumar and others,*** 2003 (2) RCR (Criminal) 221, where the acquittal was up-held by this Court by noticing that the deceased was taken to the hospital by the husband and mother-in-law and that they had sent messages to the relatives of the deceased informing about the death and that father of the deceased was present at the time of inquest proceedings. In the present case, the father of the deceased was informed and was present at the time of holding inquest. He had made statement before the S.D.M. without making any allegation, which could reveal commission of any offence. It was only 11 days thereafter that he had filed the present complaint, leading to registration of an FIR. Learned counsel would also refer to ***Mungeshwar Prasad Chaurasia Vs. State of Bihar,*** 2002 (1) RCR (Criminal) 621 to say that where there is no evidence of demand of dowry soon before the death of the bride, then the conviction could not be sustained. In Mungeshwar Prasad Chaurasia's case (supra), the Supreme Court was dealing with an appeal against conviction, where evidence revealed that the husband had demanded dowry, a few months prior to death of his wife. It was considered that the demand was made at a time, which was beyond the range of "soon before death" of the deceased. The counsel would also seek support from the observations made by the Hon'ble Supreme Court in ***Sham Lal Vs.***

***Bhagwan Dass,*** AIR 1997 Supreme Court 1873. This was a case where the evidence of prosecution was to the effect that there was dispute between the parties regarding dowry and the wife was sent back to her parental house and again was taken back to matrimonial home after Panchayat etc. This had happened 10 to 15 days prior to the occurrence and there was no evidence that she was treated with cruelty or harassment with demand of dowry during the period between her having been taken back to home and her tragic end. The Hon'ble Supreme Court observed that presumption of dowry death cannot be raised and accused could not be convicted under Section 304 B IPC. To my mind, the facts and ratio of law laid down in Sham Lal's case (supra) would clearly be attracted to the facts of the present case. The facts in the present case would also show that writing was made on 24.9.1995 and thereafter there was no allegation of any demand of dowry or harassment of the deceased by the appellants. She had died due to fire injuries almost after two months of the writing. Not only that there is no evidence for demand of dowry or harassment etc. Rather evidence is to the contrary indicating that deceased was treated well and proper after 24.9.1995. There are no specific allegations in regard to harassment or demand of dowry even prior to 24.9.1995. Taking the totality of the facts and circumstances and the evidence that has been led by the prosecution, it can be said that the prosecution has failed in proving the allegations against the appellants. The conviction and the sentence awarded to them, as such, cannot be sustained.

The present appeal is allowed and the judgment and order of conviction and sentence is set-aside. The appellants are

acquitted of the charges levelled against them. Their bail bonds and surety bonds stand discharged.

**April 03, 2007** **( RANJIT SINGH )**
**khurmi** **JUDGE**